

**BEFORE THE APPEALS BOARD  
FOR THE  
KANSAS DIVISION OF WORKERS COMPENSATION**

<b>FRED J. HUTT SR.</b>	)	
Claimant	)	
	)	
VS.	)	
	)	
<b>GREAT PLAINS MANUFACTURING</b>	)	
Respondent	)	Docket No. 1,003,055
	)	
AND	)	
	)	
<b>SENTRY INSURANCE</b>	)	
Insurance Carrier	)	

**ORDER**

Claimant appealed the May 13, 2003 preliminary hearing Order entered by Administrative Law Judge Bruce E. Moore.

**ISSUES**

The sole issue for determination is whether claimant is in need of treatment and is temporarily and totally disabled by reason of a temporary exacerbation of symptoms suffered over two years ago.

**FINDINGS OF FACT AND CONCLUSIONS OF LAW**

After reviewing the entire record compiled to date, the Board finds and concludes the claimant's appeal should be dismissed. The Board finds that it has no jurisdiction to decide the issues framed by claimant's notice of appeal.

On April 7, 2003, claimant filed an application for preliminary hearing with the Division of Workers Compensation seeking medical treatment and temporary total disability benefits for a series of injuries he alleges to have sustained over a two month period, ending on February 14, 2001. On May 9, 2003, a preliminary hearing was held and claimant's testimony was taken. Respondent asked Judge Moore to keep the record open so that a letter from Dr. Ely Bartal could be signed and submitted. That request was

granted. Dr. Bartal's letter was received and reviewed by Judge Moore. He then issued an Order denying claimant's requests for temporary total disability benefits and medical treatment explaining that "[c]laimant has failed to establish that he is in need of additional treatment and is temporarily totally disabled by reason of a temporary exacerbation of symptoms suffered two years ago."

Both claimant and respondent contend the Board has jurisdiction to hear this appeal as respondent denied the compensability of claimant's series of accidents during the course of the preliminary hearing. K.S.A. 44-534a restricts the jurisdiction of the Appeals Board to consider appeals from preliminary hearing orders to the following issues:

- (1) Whether the employee suffered an accidental injury;
- (2) Whether the injury arose out of and in the course of the employee's employment;
- (3) Whether notice is given or claim timely made; and
- (4) Whether certain defenses apply.

These issues are considered jurisdictional and subject to review by the Board upon appeal from preliminary hearing orders. The Board can also review a preliminary hearing order entered by an administrative law judge if it is alleged the administrative law judge exceeded his or her jurisdiction in granting or denying the relief requested.<sup>1</sup>

Both claimant and respondent frame the issue on appeal as one of compensability. Specifically, claimant's application for review sets forth the following issues:

1. Whether the claimant suffered an accidental injury;
2. Whether the injury arose out of and in the course of claimant's employment;
3. Whether claimant is entitled to medical care and treatment;
4. Whether temporary total disability benefits are due now or in the future.<sup>2</sup>

Both parties addressed these issues in the briefs.

Nonetheless, when Judge Moore's Order is read carefully, his rationale for denying the claimant's requests does not lie in the compensability of the claim. Rather, it was

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<sup>1</sup> See K.S.A. 44-551.

<sup>2</sup> Claimant's Appl. for Rev., at 1.

simply a lack of proof. No doubt, Judge Moore was persuaded by the opinions of Dr. Bartal who indicated in a letter<sup>3</sup> as follows:

1. The claimant currently has been diagnosed with mild carpal tunnel syndrome;
2. The job duties Mr. Hutt performed as a truck driver for Great Plains from December 2000 to February 2001 created a temporary aggravation of Mr. Hutt's carpal tunnel syndrome;
3. That the current treatment you [Dr. Bartal] would recommend for Mr. Hutt's carpal tunnel syndrome would not include injections or a release of the carpal tunnel, but you [Dr. Bartal] would recommend that Mr. Hutt avoid repetitive activities with his hands.

Put another way, Judge Moore was persuaded that claimant suffered an exacerbation of a bilateral hand condition in late 2000 and early 2001 but he was not persuaded that claimant presently needs additional treatment and that he is temporarily and totally disabled due to that temporary exacerbation. This decision is not appealable. Accordingly, claimant's appeal is dismissed.

### **AWARD**

**WHEREFORE**, it is the finding, decision and order of the Board that the Order of Administrative Law Judge Bruce E. Moore dated May 13, 2003, is affirmed.

**IT IS SO ORDERED.**

Dated this 26th day of August 2003.

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BOARD MEMBER

c: Norman Kelly, Attorney for Claimant  
Kurt Ratzlaff, Attorney for Respondent and its Insurance Carrier  
Bruce E. Moore, Administrative Law Judge  
Paula S. Greathouse, Workers Compensation Director

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<sup>3</sup> P.H. Trans., Resp. Ex. A signed by Dr. Bartal and faxed to the ALJ on May 12, 2003.